

OSHA's Enforcement of Safety Regulations in Construction and Other Industries

Since its founding in 1970, the U.S. Occupational Safety and Health Administration (OSHA) has been responsible for worker safety and health in the United States. OSHA enforces labor law delegates such enforcement powers to 23 states, Puerto Rico, the Virgin Islands. States or commonwealths having state plan OSHAs are allowed to set more stringent requirements.

In construction, OSHA regulates all work, except construction by employees of state or local government. Since 1994, the agency has focused on fall protection, in an effort to reduce the leading cause of work-related deaths in the industry (chart 45a; see chart 34a). OSHA has also been working to consult with industry, to encourage voluntary protection by contractors, and to highlight successful safety-and-health programs. However, an OSHA report prepared for Congress in 1997, *Strategic Plan: Occupational Safety and Health Administration FY 1997- FY2002*, says the agency lacks data to show whether its programs improve safety and health at worksites; the strategic plan is expected to address this issue, among others.

The Code of Federal Regulations (29 CFR 1926, as of July 1, 1996) underlies OSHA enforcement in construction (see Office of the Federal Register 1996). These sections - in order of frequency cited - relate to the problems cited most often in 1995-96:

- CFR §1926.451 - Scaffolding
- CFR § 1926.501 - Fall protection
- CFR § 1926.651-652 - Excavations
- CFR § 1926.59 - Hazard communication
- CFR § 1926.405 - Electrical wiring
- CFR § 1926.21 - Safety training and education.

The number of inspections by OSHA declined by two-thirds from 1987 to 1996, although the number increased from 1996 to 1997. And, average penalties have increased over the decade (chart 45b).

The number of federal OSHA compliance (inspection) officers for all industries has increased 6% in a decade, from 1,049 nationwide in September 1987 to 1,112 in September 1997 (this number does not include compliance officers in state-plan states) (John Franklin, OSHA Office of Statistics, personal communication, January 1998). At the same time, the number of construction worksites (including home-building) increased 3% from

approximately 1.27 million in 1987 to 1.31 million in 1997, according to the F.W. Dodge Division of the McGraw-Hill Construction Information Group (James H. Kerr, F.W. Dodge, personal communication, March 1998).

Weil has examined OSHA inspection reports for 1987-93 for the nation's 2,060 largest contractors. He found that the chance of OSHA inspecting a contractor in this group in any of the seven years was about 50% (David Weil, Boston University, personal communication, November 1997). In 1987-93, OSHA did not inspect any worksite of 486 - 24% - of the contractors, Weil found. Weil's data include state-OSHA plans.

In construction in 1997, 6.5% of inspections were health related, rather than safety related; overall, 25% of OSHA inspections are health related (John Franklin, OSHA Office of Statistics, personal communication, March 1998).

As shown on chart 45b, there are three possible explanations for the 6.8-times increase in penalty per violation in 1987-97. First, in November 1990, some financial penalties increased. For instance, the maximum for a violation increased from \$1,000 to \$7,000; for a "willful" violation, the maximum increased from \$10,000 to \$70,000. Second, OSHA has reportedly increased compliance pressure on targeted, serious violations. Third, reported penalties are "current," rather than initial assessments. So, penalties reported for the most-recent years may yet be lowered, in some cases, after employers contest the penalties.

The maximum penalty allowed for a violation of any OSHA standard is \$7,000, or \$70,000 if the violation is "willful." OSHA defines a willful violation as "an intentional disregard of or plain indifference to" the OSHA regulations.

**45a. Most common OSHA citations, by construction sector, 1995-96
(Oct. 1, 1995 - Sept. 30, 1996)**

Construction sector	OSHA standard violated	Number of Citations	Average penalty per Citation
General contractors (SIC 15)	Scaffolding	852	\$1,348
	Fall Protection	654	\$1,768
	Electrical Wiring	335	\$387
Heavy and highway (SIC 16)	Excavations, general requirements	518	\$1,790
	Excavations, protective systems	364	\$3,915
	Safety Training and education	150	\$1,663
Special trades (SIC 17)	Scaffolding	2,163	\$987
	Fall protection	1,232	\$1,556
	Hazard communication	699	\$79

45b. Number of OS HA inspections, total citations, total penalties, and average penalty per

citation, all industries, 1987-97

Year	Inspections	Citations	Total penalties	Average penalty per citation
1987	35,200	58,843	\$7,697,118	\$131
1988	30,288	55,948	\$11,141,810	\$199
1989	28,166	72,507	\$13,800,370	\$190
1990	23,611	65,763	\$15,205,204	\$231
1991	21,892	51,634	\$25,750,790	\$499
1992	22,553	48,815	\$25,907,155	\$531
1993	20,702	45,340	\$30,348,511	\$669
1994	21,112	44,852	\$31,662,864	\$706
1995	11,828	18,725	\$26,844,559	\$1,434
1996	11,741	16,339	\$19,712,485	\$1,206
1997	18,146	28,546	\$31,145,625	\$1,091

*Note: All charts - Penalties are current, which means some of the penalties may still be contested.
Chart 45a - Data cover federal OSHA only, not the 25 state-OSHA plans. Source: Chart 45a - Osha
web site (<http://www.osha.gov>). Chart 45b - OSHA Office of Statistics, Washington, D.C.*